

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 921
Case 00-03C
(Consolidated Planned Unit Development and
Zoning Map Amendment for Tenley Park LLC)
September 17, 2001

PRELIMINARY MATTERS

1. This proceeding initially concerned an application for consolidated review and approval of a Planned Unit Development and related map amendment, filed in January 2000, by Albemarle Associates, LLC (hereinafter called "Holladay") and Nelson and Alicia Bregon (hereinafter called "the Bregons"), who together are referred to as the "former applicants."
2. The initial proposal was for the construction of a residential development consisting of twenty-six townhouses, subsequently reduced to fourteen townhouses and later further reduced to thirteen townhouses on the north side of Albemarle Street, NW, between Fort Circle National Park and Nebraska Avenue (Square 1772, Lots 1, 2, 803, and 804). On August 18, 2000, the application was revised to 14 townhouses, and on October 27, 2000, revised again to 13 townhouses.
3. The former applicants also requested a related map amendment from R-1-B to R-5-B for Square 1772, Lots 1, 2, 803, and 804, located at the northwest side of the intersection of Albemarle Street, NW and Nebraska Avenue, NW. Because the land was less than an acre, it did not qualify for a PUD under the minimum two-acre land requirements for an R-1-B district, even if that requirement was waived by 50 percent pursuant to 11 DCMR § 2401.2. However, the project's land area would qualify for a PUD in an R-5-B district, if the district's one-acre minimum land requirement was reduced by 50 percent pursuant to that same section.
4. Party status was requested by and granted to the Tenleytown Neighbors Association, Inc. ("TNA"), a group made up of citizens of Tenleytown. Matthew Pavuk, who resides at 4426 Grant Road, NW, originally requested party status, but then agreed to allow his concerns as a party to be addressed through the TNA. Barbara Gunning, who resides at 3822 Albemarle Street, NW, requested and was granted party status.

Advisory Neighborhood Commission (ANC) 3E was automatically granted party status. ANC 3F, the abutting ANC, requested and was granted party status.

5. The ANCs and TNA opposed the former applicants' proposal to build 14 townhouses. The ANC 3F vote was 7-0 against the proposal, the ANC 3E vote was 3-2 against, and the TNA vote was unanimous against the proposal.
6. Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on October 19, 2000; November 2, 2000; November 27, 2000; and December 4, 2000.
7. At its March 12, 2001 meeting, the Zoning Commission declined to vote on the application. The Commission suggested that further changes be made to application, the most significant of which were the reduction in the number of units from thirteen townhouses to no more than seven units and environmental protections not assured by matter-of-right zoning.
8. Subsequently, Holladay sold its land to Tenley Park, LLC (hereinafter called "Tenley Park" or "applicant"). Tenley Park filed its application (hereinafter "Tenley Park Application") with the Zoning Commission on June 22, 2001 (and supplemented it on July 12), requesting approval of six semi-detached houses on Square 1772, Lots 1, 2, and 803; requesting a map amendment from R-1-B to R-5-B; and requesting a PUD with a waiver of the minimum land area. Hereinafter, "property," the "subject site," or the "project site" refers only to Square 1772, Lots 1, 2, and 803, which contain enough land to qualify for a PUD under the requested zoning with a waiver of the minimum land requirement.
9. Pursuant to a resolution dated July 9, 2001, ANC 3F voted unanimously to withdraw without prejudice its objections to a Map Amendment, waiver of the minimum area requirement, and approval of a PUD. ANC 3F noted that Tenley Park's design differs fundamentally from and greatly improves upon the proposal the Commission declined to previously vote on. It concluded that this project, a transit-oriented cluster development, exemplifies principles underlying area-planning concepts called "Smart Growth" because it increases density on the more buildable portions of the site to allow other buildable areas to remain as open space, to preserve natural features, and to contain traffic flow. The ANC identified several public benefits and project amenities that it considered relevant to a finding of "exceptional merit and in the best interest of the city or country":

- a. six homes in three semi-detached houses will provide a similar housing type to many homes in nearby R-2 zoned areas;
- b. arrangement of the houses in an arc extending back from the Bregon's house will create a cohesive and interesting visual layout for the 3900 block of Albemarle Street;
- c. the arrangement of the houses will preserve open space for the community to enjoy;
- d. providing a single driveway from Nebraska Avenue that addresses community concerns about pedestrian safety and congestion on Albemarle Street;
- e. preserving, pruning, and maintaining many of the mature city-owned trees that now grace Albemarle Street and Nebraska Avenue will preserve neighborhood ambience and the positive environmental characteristics during the years it will take new trees to mature;
- f. granting a perpetual conservation easement running with the land will protect a natural drainage area between Fort Circle National Park and the headwaters of Soapstone Creek;
- g. relocating the houses and driveway and use of pervious materials, as well as a strong tree protection plan, will protect the great old (pre-Civil War) majestic white oak, a major community asset belonging to the District of Columbia;
- h. preserving natural drainage, minimizing excavation and soil removal, and locating a stormwater management and infiltration system approximately 100 feet long (near the property line with Wilson High School, between Nebraska Avenue and the white oak) will combine technology with preservation to help preserve wetlands, fauna, and flora of the surviving headwaters of Soapstone Creek (a rare surface water resource) and a remnant of the District of Columbia's original forest cover still standing along its banks;
- i. protecting Fort Circle National Park from physical and visual encroachments will respect a treasure that is listed on the National Register of Historic Sites.

10. Tenley Park also held several meetings with members of TNA. On July 10, 2001, the TNA members voted 45-1 to withdraw without prejudice its objections to the project if certain enumerated conditions were met, including:

The Applicant includes in its submission to the Zoning Commission that it is seeking to build semi-detached housing generally permitted under R-2 zoning, but that it requires approval of a PUD under R-5-B only because the irregular boundaries of the lot preclude specific conformance with R-2 zoning. (Exhibit No. 185)

11. The Office of Planning (“OP”) report, dated July 10, 2001, states that OP believes that principles of smart growth dictate more than six units for the Subject Property. However, the OP report also states that it defers to the Zoning Commission’s judgment.
12. The applicant and parties waived their right to a hearing on the Tenley Park application, thereby choosing to submit this matter on the record, which includes the testimony on the former applicants’ proposal.
13. At its meeting held July 16, 2001, the Zoning Commission took proposed action to approve the Tenley Park application.
14. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC), in accordance with the District of Columbia Home Rule Act. The NCPC, by action dated August 31, 2001, found the proposed Consolidated Planned Unit Development for Square 1772, Lots 1, 2, and 803 (3901 Albemarle Street, NW), would not adversely affect the federal establishment or other federal interest, nor be inconsistent with the Comprehensive Plan for the National Capital.
15. The Commission took final action to approve the application on September 17, 2001. The findings of facts and conclusions of law which support that determination follow.

FINDINGS OF FACT

1. The applicant, Tenley Park, LLC is wholly owned by Gibson and Associates and Mark Knebel of Clemens Construction, all of which are licensed to do business within the District of Columbia.

2. The applicant proposes to construct six semi-detached houses on Square 1772, Lots 1, 2, and 803. The buildings will contain approximately 26,088 square feet of floor area, will have a floor area ratio (FAR) of 1.1, will be approximately thirty-eight feet in height from the front of the structure to the ridge of the roof, and will have a lot occupancy of about 30%. The units will have three floors, plus a basement; each unit will include a two-car garage and a visitor parking space.
3. The project site is irregularly shaped and gradually slopes from south to north. It is located along the north side of the 3900 block of Albemarle Street, NW. To the south, the project site is bounded by Albemarle Street, NW and the single-family homes across the street in the 4400 block of Grant Road, NW. To the east, the project site is bounded by Nebraska Avenue, NW and the single-family homes across the street along the 4500 block of Nebraska Avenue, NW, the 3800 block of Albemarle Street, NW and the 4500 block of Grant Road, NW. To the north of the project site is the campus of Wilson High School where the headwaters of Soapstone Creek are located, immediately adjacent to the common property line. To the west of the project site are Fort Drive, NW and Fort Circle Park, which are owned by the National Park Service ("NPS") and are on the National Register of Historic Places, as well as the single-family house owned by the Bregons. One and a half blocks to the west of the project site is the Wisconsin Avenue commercial corridor, including the Tenleytown Metrorail station.
4. Directly adjacent to the project site is a single-family house owned by the Bregons, who initially joined in as applicants along with Holladay. Nelson Bregon testified, however, that he preferred single-family homes on the project site and that he joined in the Holladay application solely to protect his family's interests in the event they sold their home. The Bregons have no objection to the current proposal provided that there is a sufficient buffer (such as a brick or a wood fence, along with some landscaping) between their property and the project site.
5. Tenleytown is the second oldest settlement in the District of Columbia after Georgetown. There are a number of pre-1900 houses still used as single-family homes in Tenleytown, especially along Grant Road, NW. There is a strong interest among the Tenleytown community in historic preservation, and an application has been filed to designate a Grant Road historic area under D.C. Law 2-144. The Office of Planning testified that it supports this designation.

Existing Zoning and the Comprehensive Plan

6. The property is currently zoned R-1-B. R-1 zoning is “designed to protect quiet residential areas now developed with one-family detached dwellings.” 11 DCMR § 200.1.
7. The applicant is requesting a related map amendment from R-1-B to R-5-B.
8. The R-1-B District permits matter of right development of single-family detached dwellings with a maximum lot occupancy of 40 percent, a maximum FAR of 1.2, and a maximum height of 3 stories within 40 feet.
9. The R-2 District permits matter of right development of single-family semi-detached dwellings with a maximum lot occupancy of 40 percent and a maximum height of 3 stories within 40 feet.
10. The R-5-B District permits matter of right development of rowhouses, flats, and apartments to a maximum FAR of 1.8, a maximum lot occupancy of 60% percent, and a maximum height of 50 feet. These requirements can be relaxed under the PUD process such that the FAR can be increased to 3.0 and the maximum height can be increased to 60 feet.
11. The Comprehensive Plan Generalized Land Use Map shows the project site in blue, meaning it is designated as “local public facilities”. This designation is a carryover from the original, extremely generalized land use map that did not distinguish between the subject small, privately-owned townhouses residential property and the large public school site to the north.
12. The incorrect designation of the project site requires that the Commission look to other sources to determine the appropriateness of the rezoning requested.
13. The Comprehensive Plan designated the area, bounded by Albemarle Street, NW, the first alley off Albemarle Street west of Wisconsin Avenue, NW, Murdock Mill Road, NW, River Road, NW, Wisconsin Avenue, NW, Brandywine Street, NW, and 40th Street, NW, as the Tenleytown Metrorail Station Special Treatment Area, designated for higher density housing. This special treatment area ends at 40th Street, NW, approximately one block west of the project site. The Commission considers it significant that the project site was not included within the Metrorail Station Special Treatment Area.

14. Based on the testimony and the text of the Comprehensive Plan, the Commission finds that the line of demarcation separating the residential area from the commercial area is 40th Street rather than Nebraska Avenue, NW, given that the entire area east of 40th Street consists of National Park Service land, single-family homes, and such other uses (such as schools and churches) also permitted under R-1-B zoning. The Commission also finds that the 3900 block of Albemarle Street is not transitional. This block is part of an established single-family neighborhood that continues eastward across Nebraska Avenue as well as westward across Tenley Circle.
15. The fact that this development site in close proximity to the Tenleytown Metro Station therefore would not, as has been suggested, warrant approval of a higher density of residential development than is actually reflected in the Tenley Park plans. The proposed development is, in fact, more in character with development permitted under R-2 zoning.
16. Nevertheless, the Commission finds that the proposed PUD related map amendment is an appropriate means of resolving technical zoning issues peculiar to the subject property. Those issues arise from the insufficiency of land area for consideration of a PUD with R-2 zoning, the irregular configuration of the property, and the unique characteristics of the property surrounding it. The grant of such a technical rezoning is appropriate in this instance and lack of proper land use designation on map because the current and future owners will be limited to the less intensive use approved, through the PUD covenant that must be recorded prior to the map amendment taking effect.

Requirements for approval of a PUD

17. Section 2403.9 of the Zoning Regulations enumerates ten “evaluation standards” that may be used by the proponent of a PUD to exhibit and document the public benefits or amenities of the project. Other “additional categories may be used as well”. *Id.* “A project may qualify for approval by being particularly strong in only one or a few of the categories in §2403.9, but must be found to be acceptable in all proffered categories and superior in many.” 11 DCMR § 2403.10.
18. The Commission evaluates the project’s public benefits and project amenities as follows.

19. 2403.9(a): Urban design, architecture, landscaping, or creation or preservation of open spaces.

- a. Tenleytown consists for the most part of detached single-family homes surrounded by yards, with a few blocks of semi-detached homes with yards.
- b. The Project is comprised of six semi-detached houses (three duplexes). These will be set well back from the property line along Albemarle Street, more in keeping with the 3800 and 3900 blocks of that street, where most houses are not built up to the property line, which will draw the eye to the trees and green space in front of the properties. The plan calls for preservation of existing mature trees in the public space, where possible, and the planting of 25 additional trees. The houses will be arranged in an arc to take advantage of the unusual shape of the lot, with sight lines between the buildings into the urban forest beyond. The natural downward slope of the land away from Albemarle Street will be utilized to cause the height of the building to appear lower. The applicant's plan to have porches, rooflines, and exterior building materials to be similar to those found in the neighborhood will cause the duplexes to blend in with the surrounding homes.
- c. The applicant has agreed to grant a conservation easement to the National Park Service at the rear corner of the project site, thus helping preserve some of the open space.
- d. The Commission concludes that the project's design, landscaping and preservation of open spaces are particularly strong.

20. 2403.9(b): Site planning, and efficient and economical land utilization.

- a. The current site plan is sensitive to the characteristics of the land. The structures are set back from the sidewalk and use the slope of the land to lower perceived height. In addition, they are set well away from the white oak tree and Soapstone Creek to minimize interference with them. Clustering the six semi-detached houses in the middle of the property will triple the amount of housing previously on the property while maintaining green space for residents and pedestrians. This design will minimize overall disturbance to the soil of the site. Limited cut and fill will be needed because existing grade will be maintained at the front and rear of the structures, although some regrading will be required to allow adequate drainage.

- b. The Commission concludes that the site planning and efficiency of land use are particularly strong in this plan and greater than would be achieved with by matter-of-right development.
- 21. 2403.9(c): Effective and safe vehicular and pedestrian access, transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts.
 - a. This project site is near both a subway stop and numerous bus lines. Therefore, it is well connected to public transportation service.
 - b. This Commission is also required to evaluate the proposal in terms of its ability to mitigate adverse traffic impacts. The driveway exit for the project will be on Nebraska Avenue. The Nebraska Avenue leg of the Albemarle/ Nebraska Avenue intersection appears to clear more reliably during the green phase of the traffic light. Pedestrian traffic on Nebraska is light. The driveway also provides ample room for larger vehicles, such as delivery trucks, fire trucks and garbage trucks, to maneuver.
 - c. The Commission concludes that the project will provide effective and safe vehicular and pedestrian access and is particularly strong under this standard.
- 22. 2403.9(d): Historic preservation of private or public structures, places or parks.
 - a. Many of the nearby houses in the 4400 and 4500 block of Grant Road, NW are part of a proposed historic district.. The Historic Preservation Review Office has informally reviewed the proposed architectural designs for the project.
 - b. Historic preservation of parks also remains pertinent. David Murphy from the National Park Service testified about the project's impact on the adjacent parkland. This parkland is part of the Fort Circle Park system, which was conceived by the McMillan Commission in 1902 to link the Civil War fortifications of the city by means of a parkway. Although only pieces of the parkway were ever built, there is presently an interest in planning a Fort Circle Trail, so that people will be able to walk from the C&O Canal through Fort Reno and Fort Stevens to Anacostia and Fort Dupont. This will be an interpretive historical park. Mr. Murphy asserted that the entire setting of the area is important to preserving the historic aspect of the park. This would include the headwaters of Soapstone Creek and its native organisms and the large white oak that stands on Wilson High School property adjacent to the project site. Mr. Murphy testified that the stand of trees along the creek is the

last remaining section of forest in Tenleytown that would have been visible during the Civil War. He urged that any development next to the park not be visually startling and that strong efforts be taken to preserve the oak tree, not only for its historic value but also for its contribution to the natural setting. The trees are discussed in the section involving environmental criteria, *infra*.

- c. The applicant will provide the National Park Service a conservation easement of approximately 3,870 square feet at the rear corner of the property. The applicant has also agreed with the Park Service on fencing to protect the parkland from pedestrian traffic.
 - d. The Commission concludes that these plans by the applicant are beneficial to the parkland adjacent to the project site and are particularly strong under this standard.
23. 2403.9(e): Employment and training opportunities. Tenley Park has agreed to enter into a First Source Employment Agreement with D.C. Department of Employment Services and a Memorandum of Understanding with Department of Human Rights and Local Business Development, thus providing employment and training opportunities to District of Columbia residents. Such agreements means that Tenley Park will make a bona fide effort to award at least 35% of the construction related contracts to certified local businesses and to fill at least 51% of the jobs created by the project with District of Columbia residents. This is a benefit that would not be required for matter-of-right development.
24. 2403.9(f): Housing and affordable housing. The proposed project would replace two single-family homes with six semi-detached homes, thereby increasing the city's housing stock, while maintaining the project site in character with the neighborhood. This is a particularly strong benefit.
25. 2403.9(g): Social services/facilities. Given the small scale of the project, this factor is not applicable.
26. 2403.9(h): Environmental benefits, such as storm water runoff controls and preservation of open space or trees.
- a. The project will safeguard the preservation of the large white oak tree in the rear of the property. The white oak is on Wilson High School property at its border with the project site. This tree is a unique and valuable resource, part of an urban forest dating back to at least the Civil War, and could live for hundreds of years. It was bound to be disturbed if not destroyed by the new construction.

- b. The applicant's buildings will be no closer than 50 feet from the tree a distance that all parties agree is adequate to assure the trees, continued viability. In addition, the applicant is submitting a strong tree protection plan, which includes prohibitions on vehicular traffic and construction activity near the tree. The applicant plans to use pervious materials for the driveway. The Commission concludes that these concessions are a particularly aggressive solution to mitigate danger to this historic tree.
- c. In addition, Tenley Park has agreed to preserve and protect the healthy, mature trees in the public space, and to plant 25 additional trees on the project site and adjacent land. This is an additional environmental amenity.
- d. The headwaters of Soapstone Creek are adjacent to the project site on the grounds of Wilson High School. All witnesses who addressed this issue testified that preservation of the creek, which flows into Rock Creek, is of considerable importance. The applicant's design will have no significant impact on the creek. Granting a perpetual conservation easement running with the land will protect the natural drainage area from Fort Circle Park to the creek.
- e. An adequate forest buffer is important to maintaining this habitat. Riparian buffers filter runoff, help replenish ground water, and provide canopy and shade to the stream, as well as leaf food and habitat. Tenley Park will work with the D.C. Public School System to install some 24 trees on 25-foot centers – 12 on either side of Soapstone Creek – with all or most on public school land (but a few may be on project land near the property line). The Commission finds such a plan is in keeping with the Office of Planning recommendation regarding tree planting.
- f. In addition, the applicant plans to install a storm water management and infiltration system. In this plan, a 48" subsurface pipe one hundred feet long will be located at the northeast property line, near Soapstone Creek. A sand/grit filter will cleanse the incoming water before it is discharged back into the creek. There will be an emergency overflow that will be hard-piped into the current closed system at Nebraska Avenue.
- g. The Commission concludes that applicant has dealt with the substantial environmental concerns of the community in a sensitive and effective manner and that this standard has been met in a particularly strong fashion that is far superior to that required for by matter-of-right development.

27. 2403.9(i): Uses of special value to the neighborhood or the District of Columbia as a whole.

- a. Wilson High School is having Soapstone Creek certified as a Schoolyard Habitat in the National Wildlife Federation's Naturelink Program. Gloria Gibson, the chairperson of the Science Department at Wilson High School, testified that the school intends to use the creek as an outdoor classroom/laboratory. The trees that the applicant intends to plant along the banks of the stream will ensure more abundant and varied wildlife for the program.
- b. Currently, students and members of the community have jointly cleaned up debris that accumulates in the stream valley. Tenley Park has committed to joining this effort to keep Soapstone Creek clean. If the D.C. Public Schools desire, Tenley Park may install fencing at the eastern end of Soapstone Creek to deter illegal dumping.
- c. Several storm pipes lead into Soapstone Creek. The soil is actively eroding at the outfalls of some of them. The applicant will place rip-rap at these stormwater pipe outfalls to reduce erosion and siltation of the creek.
- d. The Commission finds that the cooperation between the applicant and the school will benefit Wilson High School students and the community, as well as preserve D.C. Public School property. This project has special value to the District of Columbia as a whole and this factor is particularly strong.

28. 2403.9(j): Other public benefits and project amenities and other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.

- a. At the request of the National Park Service, Tenley Park will install a wrought iron decorative fence along the project site's property line with the National Park Service Property and continuing around the corner of the easement area, along the project site's property line with the D.C. Public Schools Property, and end in close proximity to the great white oak. The Commission finds such fencing satisfactory. Tenley Park will also prepare and implement a tree preservation plan to minimize disruption to National Park Service trees during construction.
- b. To enhance the aesthetics of this project, on-site utilities will be placed underground and interior sidewalks will be brick.

- c. The use of fertilizers will be almost totally prohibited on the property to preserve sensitive ecological features of adjacent land.
 - d. Tenley Park has offered to work with the neighbors to minimize disruption during construction. This further indicates the good faith of this applicant.
 - e. The applicant's proposal is particularly strong under this standard.
- 29. Based upon the above findings, the Commission concludes that the applicant has demonstrated that the proffered public benefits and project amenities qualify the project for approval as a planned unit development.
- 30. The Applicant also seeks a waiver of the R-5-B minimum lot area requirement of one acre as stated in 11 DCMR § 2401.1(a). The Zoning Commission has the authority to grant waivers of "not more than fifty percent (50%) of the minimum lot area requirement" provided that the Commission concludes, "after public hearing that the development is of exceptional merit and in the best interest of the city or country." 11 DCMR § 2401.2(a). In addition, the PUD must be located outside the Central Employment Area, with at least 80 percent of the gross floor area to be used for dwelling units. §2401.2(b).
- 31. The project is located outside of the Central Employment Area and consists entirely of dwelling units.
- 32. In view of the Commission's finding that the proffered public benefits and project amenities are all particularly strong, the Commission finds that the applicant has more than met its burden to demonstrate that the proposed PUD is of exceptional merit and in the best interest of the city and country.
- 33. The Zoning Commission finds that the PUD is not inconsistent with and furthers and enhances the following policies and objectives of the Comprehensive Plan and the Ward 3 Element of the Comprehensive Plan:
 - a. Land Use Element: The PUD will increase housing near public transportation at a density similar to the surrounding area, while allowing good and safe pedestrian and vehicular circulation. It will maintain the existing land use character of the Tenleytown neighborhood of which it is a part, thereby protecting and enhancing this established residential neighborhood, in accordance with a major theme of the Ward 3 Element, "to protect and maintain the low-density, high-quality character of the ward." 10 DCMR Section 1400.2 (a) (2).

- b. **Urban Design Element:** The PUD will complement and conserve the natural environment by clustering the houses in the middle of the property so as to retain mature trees in the public space and provide additional open space along the street. A setback of at least 50 feet from the great white oak tree at the rear of the property, along with the use of a permeable surface for the driveway near its root system and a tree protection plan, will help preserve this environmentally and historically valuable feature. The clustering will also allow a protective setback between the buildings and the headwaters of Soapstone Creek, in keeping with the provision that development adjacent to streams and stream valleys in Ward 3 be low density. 10 DCMR § 1406.5 (a)(5). Spaces between the houses will afford District residents' views of the oak and the streamside cover. The arrangement of the houses in an arc will take advantage of the unusual shape of the lot and will provide a cohesive and visually-interesting streetscape. The development will minimize regrading. Additional trees will be planted on site. The PUD project is sensitive to the surrounding architecture in both architectural design and height. Tenley Park plans to design and build units that have similar features found in the neighborhood, including front porches, similar rooflines, dormers, etc., and proposes a mixture of siding, shingle, and brick for the exterior finishes, all materials commonly found in the neighborhood.
- c. **Environmental Element:** In addition to protecting the quality of the land area by taking measures to preserve trees in public space and the great white oak, the PUD will provide several amenities to improve water quality. The conservation easement will preserve natural drainage to Soapstone Creek. A storm water management and infiltration system will recharge groundwater that feeds Soapstone Creek and its wetlands and will also remove pollutants. Trees will be planted along the banks of the creek to regulate its temperature and provide habitat for wildlife. Tenley Park will place reasonable erosion controls at some of the storm water outfalls currently leading into Soapstone Creek to prevent siltation. The applicant will work with Wilson High School to clean up debris in the stream valley and to install fencing to prevent illegal dumping into the creek.
- d. **Preservation and Historic Features Element:** The project site is adjacent to Fort Circle National Park, a landmark park on the National Register of Historic Places. The six semi-detached houses will be similar to R-2 housing, in keeping with the provision that development adjacent to landmark parks in Ward 3 be low density. 10 DCMR § 1407.3 (c). The conservation easement will protect Fort Circle National Park from physical and visual encroachments.

- e. Housing Element: The PUD will triple the amount of housing formerly on the property to meet the needs of current and future residents of the District. The applicant has actively involved the community in the planning process.

CONCLUSIONS OF LAW

1. The Planned Unit Development process is designed to encourage high-quality developments that provide public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality or public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” 11 DCMR § 2400.2.
2. The Commission must find that the project is not inconsistent with the Comprehensive Plan and other public policies, 11 DCMR § 2403.4, and that the impact of the project on surrounding areas and government operations will not be unacceptable. A project’s impact must either be favorable or, if adverse, capable of being mitigated or outweighed by the project’s benefits. 11 DCMR § 2403.3
3. In evaluating whether the applicant has met its burden, the Commission must “judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” 11 DCMR § 2403.8
4. Because the applicant seeks a waiver of approximately 50% of the minimum lot requirement of one acre for an R-5-B project the applicant must also demonstrate that “the development is of exceptional merit and in the best interest of the city or country” and that it is located outside the Central Employment Area, with at least 80 percent of the gross floor area to be used for dwelling units. 11 DCMR § 2401.2.
5. The Zoning Regulations treat a PUD related map amendment differently from other types of rezoning. PUD related amendments do not become effective until after the filing of a recorded covenant that binds the current and future owners to use the subject property only as permitted and conditioned by the Commission. 2408.15 & 3028.9. In addition, if the PUD is not constructed within the time and in the manner directed by the Commission, the map amendment expires and the zoning reverts to the pre-existing designation 11 DCMR § 2400.7 and 2408.14. A PUD map amendment is thus a temporary change to existing zoning, that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. This being the case, the Commission may grant PUD related map amendments in circumstances where it might reject permanent rezoning.

6. Nevertheless, a PUD applicant seeking a related map amendment must still demonstrate that “public health, safety, and general welfare goals of zoning regulation would be served by the ... amendment”. *Citizens Assoc. of Georgetown, Inc. v. District of Columbia Zoning Comm.*, 402 A.2d 36, 39 (1974). A proposed map amendment should:

create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

Id. at 40.

7. Based upon the record, and the findings of facts stated above, the Commission concludes that the applicant has met its burden in all respects as to all issues.
8. The proposed PUD is not inconsistent with and furthers and enhances the land use element, the urban design element, the environmental element, the preservation and historic features element, and the housing element of the Comprehensive Plan and the Ward 3 Element of the Comprehensive Plan. In making this determination, the Commission was cognizant of the fact that Comprehensive Plan Generalized Land Use map incorrectly designates the Subject Property for local public facility use.
9. This project is an example of development that is transit-oriented, increases housing density while maintaining open space to preserve natural features, is environmentally sensitive, and meets with the approval of the nearby residential community. No potential adverse impact has been found which can not be mitigated by the conditions imposed by this order.
10. The approval of the application will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
11. The applicant has exhibited and documented project amenities and public benefits that are particularly strong. In view of this showing, the Commission concludes that the project more than meets the requisite showing for exceptional merit. Having found exceptional merit, and having further concluded that project is located outside the Central Employment Area, and consists entirely of residential units, the Commission grants the area waiver sought.

12. The project's particularly strong amenities and benefits, when taken together with the favorable impact of the project, warrant the approval of the PUD.
13. With respect to the related map amendment, the Commission is aware of the concern over the "precedent" of granting the application. However, a map amendment granted as part of a PUD establishes no precedent for zoning cases involving permanent zoning map amendments. A PUD map amendment is tied to the PUD use. The PUD use is constrained by covenant. Therefore, the merits of such amendments are usually analyzed in the narrow context of the PUD use requested. Such is certainly the case here, where the amendment was sought, and granted, due to the insufficient land area for R-2 zoning, the irregular configuration of the property, the incorrect land use designation of the Generalized Land Use Map, and the unique characteristics of the property surrounding it.
14. However, the Commission specifically rejects the notion that the property's proximity to the Tenleytown Metro Station would have justified R-5-B rezoning. In the absence of an accurate designation of this area on Comprehensive Plan Generalized Land Use map, the Commission concludes that the Council's exclusion of this area from the Tenleytown Metro Station Special Treatment Area manifested its intent that the existing lower densities be maintained. The technical rezoning granted will not be inconsistent with this policy, since the PUD covenant will restrict use of the property to the R-2 zoning characteristics of the approved project.
15. The Commission is required under D.C. Official Code §1-309.10(d)(3)(A) (2001) to give "great weight" to the affected ANC's recommendations. Under D.C. Official Code §1-309.10 (d)(3)(B), the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's issues and concerns. In this matter, the ANC parties have offered persuasive advice as to why the project would not negatively impact the Tenleytown community.
16. The proposed application can be approved with conditions to ensure that development will not have an adverse effect on the surrounding area.
17. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia ORDERS that the application for a

land requirement waiver, consolidated planned unit development and map amendment from R-1-B to R-5-B for Square 1772, Lots 1, 2, and 803 be GRANTED. The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in accordance with the plans prepared by the architectural firm of GTM Architects and the landscaping of the project shall be developed as shown on the plans developed by VIKA, Inc., marked as Exhibit No. 180, as modified by the guidelines, conditions, and standards of this order.
2. Phase II of the Holladay proposal, which consists of Square 1772, Lot 804, is eliminated. There will be no zoning change granted to Square 1772, Lot 804.
3. The project shall consist of six semi-detached units in three buildings set back from the property lines in an arc, with a common green area facing Albemarle Street, and sight lines into the property's green space and the urban forest beyond. All units shall be single-family dwellings.
4. The gross floor area of the project shall not exceed 26,088 square feet and the total floor area ratio (FAR) of the project shall not exceed 1.1, as shown on the plans marked as Exhibit No. 180.
5. The height of the project shall not exceed thirty-eight feet above finished grade at the front three stories and forty-three feet, eight inches at the rear four stories, as shown on the plans marked as Exhibit No. 180.
6. Each unit will include a two-car garage, and six off-street parking spaces will also be provided, as shown on the plans marked as Exhibit No. 180.
7. The lot occupancy shall not exceed thirty percent, as shown on the plans marked as Exhibit No. 180.
8. Tree Preservation.
 - a. Tenley Park will prepare, implement, and enforce detailed tree preservation and protection plans, in accordance with Exhibit No. 182 and best professional practices. These plans will include, among other things:
 - locations and sturdiness of construction-period fences;
 - locations of root-pruning trenches, trenching methods, and pruning methods and, at least in the case of the great white oak, will consider air space trenching and the alternatives of hand pruning or sophisticated machine pruning; and

- ensuring compliance.
- b. The preservation plans for trees on NPS land shall be coordinated with NPS. The preservation plans for trees on District of Columbia public space shall be coordinated with Division of Trees and Landscaping in the Department of Public Works ("Trees Division"). All plans shall be presented to NPS, Trees Division, ANCs 3E and 3F (and through them to TNA, Wilson High School, and D.C. Public Schools) for comment, prior to adoption.
- c. Tenley Park shall take the necessary steps to attempt to preserve the existing white oak tree at the rear of the project site, as provided for in Exhibits Nos. 180 and 182.
- d. The six units shall be constructed at least fifty feet or more away from the white oak tree.
- e. Tenley Park will minimize impervious surfaces near the white oak tree and will prohibit vehicular and construction traffic near the tree.
- f. Tenley Park shall work with an Arborist and the Trees Division in its attempt to save, prune, and maintain existing trees in public space adjacent to the property, and to determine which trees should be removed.
- g. Tenley Park shall install fencing along the subject site's property line with the NPS property and continuing around the corner of the easement area, along the subject site's property line with the D.C. Public Schools Property, and end in close proximity to the great white oak, as shown on drawing C-1 of Exhibit No. 180. Such fencing shall be located on Tenley Park's property, and posts will be dug by hand to minimize disruption to existing trees and their root systems. Tenley Park shall prune interfering tree roots if they are encountered during foundation excavation. In addition, in accordance with Exhibit No. 182, Tenley Park will construct a five-foot (5') tall, black or dark green, heavy gauge commercial chain-link fence approximately 75 feet long in the public space between Nebraska Avenue and Soapstone Creek, as an off-site amenity, pursuant to DPW approval, to deter individuals from dumping trash and debris into the Creek, onto the Creek banks, or onto public space. Such fencing shall be completed prior to delivery of the first two units.
- h. In constructing the unit closest to the NPS property, particularly during masonry installation, Tenley Park shall coordinate with the NPS to minimize disturbance to the trees on the NPS property.

- i. Tenley Park shall install special subsurface material (Sta-Light or its equal) as the foundation for the rear driveway under the drip line of the white oak tree only.
 - j. As an off-site amenity (and in addition to installing trees within its property as part of its landscaping plan), Tenley Park, in accordance with Exhibit No. 182 and in consultation with the NPS and subject to the approval of the D.C. Public Schools, shall install at least twenty (20) trees of native species on DCPS land to enhance vegetation shading Soapstone Creek. Based on the specific recommendation of the NPS and the Environmental Health Administration of the Department of Health, Tenley Park plans to center most of the trees on approximately 25-foot intervals and will invite D.C. Public Schools to participate. Tenley Park will invite participation of Wilson High School in selecting exact locations and species of native trees. These species will likely be a mixture of white oaks, black oaks, sycamore and tulip poplar trees and may include eastern red cedar and black gum. Completion will precede delivery of the first two units.
 - k. Tenley Park shall establish only one main sewer tap and two main water taps in public space in order to limit the disruption to the existing trees in public space.
9. Approximately 3,870 square feet of land in the rear corner of the proposed site has been set aside for a conservation easement for the National Park Service. This easement is shown on page C2 of the VIKa drawings, marked as Exhibit No. 180. Any future Homeowner's Association regulations will comply with the terms of this easement.
10. Tenley Park shall follow the project's design which places the proposed homes so that actual disturbance to the existing site will be minimized, although some re-grading of the subject site will be necessary to allow adequate drainage.
11. The storm water management plan calls for a subsurface pipe to be located at the northeast property line, near Soapstone Creek. An infiltration device will cleanse the incoming water before it is infiltrated underground, which will help recharge the existing stream. There will be an emergency overflow that will be hard piped into the current closed system at Nebraska Avenue. Tenley Park will abide by all District laws and regulations as to its storm water management.
12. No fertilizers shall be used on the subject site, except as may be required to protect the white oak during construction.

13. Tenley Park shall remove debris from Soapstone Creek and provide outfall protection in coordination with the D.C. Public Schools and Woodrow Wilson High School, within reason.
14. Tenley Park shall provide only one curb cut from Nebraska Avenue, as shown on the plans marked as Exhibit No. 180.
15. The driveway on the subject site shall cover no more than approximately 5,255 square feet of land area.
16. Tenley Park shall work with the neighborhood to develop, implement, and police a construction plan that will help minimize the disruption to the neighborhood.
17. Tenley Park shall work with the owners of Lot 804 (the Bregons) to create appropriate buffering between the new development and Lot 804. In accordance with Exhibit No. 182, Tenley Park will discuss with the owners of Lot 804 and will design and construct an acceptable wood fence screening system, at least six feet high, along the property line shared by Lots 803 and 804 and will plant a series of Leyland Cypress (or equivalent) trees along that shared line, all to be completed before delivery of the first two units.
18. On-site utilities shall be located underground.
19. Tenley Park shall enter into a First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least 51 percent of the jobs created by the project.
20. Tenley Park shall enter into a Memorandum of Understanding with the Department of Human Rights and Local Business Development in order to achieve, at a minimum, the goal of 35 percent participation by small, local and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security of the project to be created as a result of the project.
21. Tenley Park shall have the necessary flexibility to make adjustments to the project with respect to the location and design of all interior components, including floors, partitions, doors, hallways, columns, and stairways, provided that the variations do not change the exterior configuration of the building.
22. The change of zoning from R-1-B to R-5-B for the project site shall be effective upon the recordation of a covenant as required by 11 DCMR § 2409.3, and discussed in Paragraphs 22 and 23 of the Decision section of this Order.

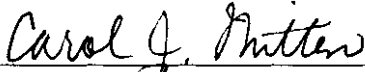
23. No building permit shall be issued for the PUD until Tenley Park has recorded a covenant in the land records of the District of Columbia, between the applicant and the District of Columbia, that is satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the applicant and all successors in title to construct and use the project site in accordance with this order, or amendment thereof, by the Zoning Commission.
24. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA until the applicant has filed a certified copy of the covenant as recorded with the records of the Office of Zoning.
25. The consolidated PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, application must be filed for a building permit as specified in 11 DCMR §§ 2408.8 and 2409.1. Construction shall start within three years of the effective date of this order.
26. Pursuant to D.C. Code § 1-2531 (1991 ed.), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1991), and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division of DCRA to approve permits if the applicant fails to comply with any provision of D.C. Law 2-38 as amended.

The Commission on July 16, 2001, voted to **APPROVE** the application on a vote of **4-0-1** (Herbert M. Franklin, John G. Parsons, Anthony J. Hood and, to approve, Carol J. Mitten to approve, by absentee vote, James H. Hannaham, present, not voting not having heard the case).


The Order was **ADOPTED** by the Zoning Commission at its public meeting on September 17, 2001, by a vote of **5-0-0** (Carol J. Mitten, John G. Parsons, Anthony J. Hood, James H. Hannaham, Herbert M. Franklin (by absentee ballot) to adopt).

Z.C ORDER NO. 921
CASE NO. 00-03C
PAGE NO. 23

In accordance with the provision of 11 DCMR 3028, this Order shall become final and effective upon publication in the D.C. Register, that is on NOV 16 2001.



Carol J. Mitten
Chairperson,
Zoning Commission



Jerrily R. Kress, FAIA
Director,
Office of Zoning